

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RUTH ANN WILLIAMS,	:	Case No. 1:21-cv-595
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
THE PRUDENTIAL INSURANCE	:	
COMPANY OF AMERICA	:	
	:	
and	:	
	:	
CHCS SERVICES, INC.	:	
	:	
Defendants.		

ORDER GRANTING PLAINTIFF’S MOTION FOR LEAVE TO AMEND

This case is before the Court on Plaintiff’s “Notice of Partial Dismissal of Counts III and IV.” (Doc. 18). Plaintiff purports to voluntarily dismiss Counts III and IV of her Amended Complaint, (Doc. 9), under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

Rule 41 permits plaintiffs to “dismiss an *action* without a court order by filing ... a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i) (emphasis supplied). In the Sixth Circuit, plaintiffs may only use a Rule 41 notice to dismiss the entire controversy, not a portion of the claims. *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961). A Rule 41 notice purporting to dismiss only certain claims is therefore ineffective. *See, e.g., Malik v. F-19 Holdings, LLC*, No. CV 5:15-130-KKC, 2016 WL 2939150, at *4 (E.D. Ky. May 19, 2016).

Where plaintiffs seek to dismiss only some of their claims, the appropriate procedural vehicle is an amended complaint. Fed. R. Civ. P. 15; *see Barrientos v. UT-Battelle, LLC*, 284 F. Supp. 2d 908, 916 (S.D. Ohio 2003). For that reason, courts often, in their discretion, construe a Rule 41 notice that purports “to dispose of fewer than all claims against a defendant” as a Rule 15 motion for leave to amend. *Baker v. City of Detroit*, 217 F. App’x 491, 497 (6th Cir. 2007).

Accordingly, the Court will construe Plaintiff’s “notice” as a motion for leave to amend under Rule 15. Courts “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Such is the case here.

Plaintiff’s motion for leave to amend is **GRANTED**. Plaintiff shall file her amended complaint within 21 days of the date of this Order. Consistent with Rule 15(a)(3), Defendants shall have 14 days to respond to the Amended Complaint.

IT IS SO ORDERED.

Date: 11/16/2021

s/Timothy S. Black
Timothy S. Black
United States District Judge